



Federal Communications Commission
Washington, D.C. 20554
FEB 13 1998

EX PARTE OR LATE FILED

The Honorable Charles H. Taylor
U. S. House of Representatives
231 Cannon House Office Building
Washington, D.C. 20515

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Congressman Taylor:

Thank you for your letter dated January 7, 1998, on behalf of your constituent, Mayor John H. Peterson, City of Brevard, North Carolina, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in his community. Your constituent's letter refers to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, your constituent's letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

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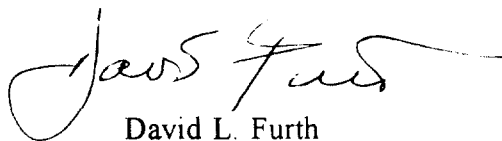
The Honorable Charles H. Taylor

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Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth", with a stylized, flowing script.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

CHARLES H. TAYLOR
11TH DISTRICT, NORTH CAROLINA

MEMBER
COMMITTEE ON
APPROPRIATIONS

SUBCOMMITTEE ON
COMMERCE, JUSTICE, STATE

SUBCOMMITTEE ON
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Congress of the United States
House of Representatives

Washington, DC 20515-3311

January 7, 1998

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Ms. Karen Kornbluh
Director, Office of Legislative and Intergovernmental Affairs
Federal Communications Commission
1919 M Street NW Rm 808
Washington, D.C. 20554-0001

Dear Karen:

Please find attached a letter from my constituent, Mayor John Peterson. Mayor Peterson has some concerns regarding local zoning authority regarding the location of cellular, radio and TV towers.

I believe you will find his letter to be self-explanatory. I would appreciate a response regarding his concerns. Please direct your response to my Washington office so that I can forward your reply to my constituent.

Thank you in advance for your assistance in this matter.

Sincerely,

Charles
Charles H. Taylor
Member of Congress

CHT:kk

CITY OF BREVARD

NORTH CAROLINA



OFFICE OF
THE MAYOR

November 4, 1997

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The Honorable Charles H. Taylor
U. S. House of Representatives
516 Cannon Building
Washington, D. C. 20515

Dear Mr. Taylor:

I am writing to you about the Federal Communications Commission and its attempts to preempt local zoning authority regarding the location of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function and to my knowledge the FCC has no knowledge or expertise in the area of zoning. Neither is the FCC readily accessible to most citizens as are the municipalities and counties of the country. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Communications Act, Congress expressly preserved the locality's zoning authority over these structures. Now, however, the FCC is trying to get this jurisdiction back by issuing rules which improperly infringe on the local zoning authority. They propose to do this by asserting their authority over any issue where the issue of RF radiation is mentioned, ignoring the fact that municipalities cannot control statements that are made by citizens during public hearings. We, like all municipalities in NC are required to hold public hearings and allow citizens to speak, on the record, prior to any zoning action. To use a concern expressed by someone who is not connected with the government to seize the local zoning authority and reverse local zoning decisions violates the basic principles of Federalism, and the rights of our citizens to petition their government and be heard. The above statements are particularly true if the local government says that it is not and will not consider any statements that go beyond the radiation authority congress left with municipalities and the decision is completely valid on other grounds, such as the impact of the tower on property values or esthetics.

How does the FCC propose to "second guess" our decisions? The courts are bound by the stated reasons given by the municipality. Either these reasons are sufficient to uphold the decision or they are not. The FCC cannot "second guess" our decision any more than

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the courts can "second guess" the true reasons for the FCC's decisions. As you well know, broadcast towers can be over 2,000 feet high. It is, therefore, astounding that the FCC would propose that municipalities cannot consider the impact of such towers on property values, the environment or aesthetics and that even safety considerations take second place. How would you feel if a 2,000 foot tall tower were proposed for construction adjacent to your home here in NC?

Finally, the FCC proposes to set artificial time limits on a municipality's action on applications submitted for towers. This serves no useful purpose. It is a violation of the U.S. Constitution, the Communications Act and Federalism for them to put time limits on municipalities to act on all local approvals and then state that all such applications shall be deemed approved if we do not act within this time frame, even if the application is incomplete or violates state or local law. Imagine the reaction of the FCC if Congress required them to process all applications within 45 days of submission, regardless of the completeness of the application or other factors that require additional time for evaluation.

I urge you to do all that is necessary to stop this power grab by the FCC in matters relating to cellular and broadcast towers. Allow those who are closest to the citizens and responsive to the needs of the community in which they live to make the zoning decisions that impact their community.

Thank you for your consideration.

Sincerely

CITY OF BREVARD



John H. Peterson
Mayor